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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Elizabeth Joanne Johnson,) No. CV 10-2795-PHX-RCB (ECV)

10 Plaintiff,) **ORDER**

11 vs.)

12 Lieutenant Love, et al.,)

13 Defendants.)

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15 Plaintiff Elizabeth Joanne Johnson, who is confined in the Maricopa County Estrella

16 Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application

17 to Proceed *In Forma Pauperis*. The Court will dismiss the Complaint with leave to amend.

18 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

19 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.

20 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).

21 The Court will assess an initial partial filing fee of \$10.93. The remainder of the fee will be

22 collected monthly in payments of 20% of the previous month's income each time the amount

23 in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate

24 Order requiring the appropriate government agency to collect and forward the fees according

25 to the statutory formula.

26 **II. Statutory Screening of Prisoner Complaints**

27 The Court is required to screen complaints brought by prisoners seeking relief against

28 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
 2 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
 3 be granted, or that seek monetary relief from a defendant who is immune from such relief.
 4 28 U.S.C. § 1915A(b)(1), (2).

5 A pleading must contain a “short and plain statement of the claim *showing* that the
 6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
 7 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
 8 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
 9 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
 10 statements, do not suffice.” Id.

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 12 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
 13 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 14 that allows the court to draw the reasonable inference that the defendant is liable for the
 15 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
 16 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 17 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
 18 allegations may be consistent with a constitutional claim, a court must assess whether there
 19 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

20 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 21 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, No. 07-17265, 2010 WL
 22 2947323, at *3 (9th Cir. Jul. 29, 2010). A “complaint [filed by a *pro se* prisoner] ‘must be
 23 held to less stringent standards than formal pleadings drafted by lawyers.’” Id. (quoting
 24 Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*)).

25 If the Court determines that a pleading could be cured by the allegation of other facts,
 26 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
 27 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
 28 should not, however, advise the litigant how to cure the defects. This type of advice “would

undermine district judges' role as impartial decisionmakers." Pliler v. Ford, 542 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was required to inform a litigant of deficiencies). Plaintiff's Complaint will be dismissed for failure to state a claim, with leave to amend because the Complaint may possibly be saved by amendment.

III. Complaint

Plaintiff names Lieutenant Love and Sergeant Moore as Defendants in the Complaint. Plaintiff raises two claims for relief.

In Count I, Plaintiff claims that Defendant Love wrongly charged her with a disciplinary violation for lying in a grievance. In Count II, Plaintiff claims that Defendant Moore talked about her and her case and laughed about her where visitors to the jail could hear. Plaintiff claims this "compromised" her case.

Plaintiff seeks money damages.

IV. Failure to State a Claim

In order to recover under § 1983, a plaintiff must show: (1) the violation of a right protected by the Constitution or federal law; (2) that was proximately caused; (3) by conduct of a "person" named as a defendant; (4) acting under color of state law. See Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). Plaintiff has not alleged a violation of a constitutional right in any of her claims.

Moreover, Plaintiff has not alleged facts that demonstrate a violation of her constitutional rights. With respect to Count I, Plaintiff has not alleged facts showing that she was prevented from filing grievances nor has she shown that she was denied due process with respect to the related disciplinary charge.

In Count II, Plaintiff has not explained how her case was "compromised" by Defendant Moore or how her constitutional rights were violated. Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), conclusory and vague allegations will not support a cause of action. Ivey v. Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982).

V. Leave to Amend

For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff fails to use the court-approved form, the Court may strike the amended complaint and dismiss this action without further notice to Plaintiff.

If Plaintiff files an amended complaint, Plaintiff must write short, plain statements telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the Defendant who violated the right; (3) exactly what that Defendant did or failed to do; (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of that Defendant's conduct. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).

Plaintiff must repeat this process for each person she names as a Defendant. If Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for failure to state a claim. **Conclusory allegations that a Defendant or group of Defendants have violated a constitutional right are not acceptable and will be dismissed.**

Plaintiff must clearly designate on the face of the document that it is the "First Amended Complaint." The first amended complaint must be retyped or rewritten in its entirety on the court-approved form and may not incorporate any part of the original Complaint by reference. Plaintiff may include only one claim per count.

A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

1 **VI. Warnings**

2 **A. Release**

3 Plaintiff must pay the unpaid balance of the filing fee within 120 days of her release.
4 Also, within 30 days of her release, she must either (1) notify the Court that she intends to
5 pay the balance or (2) show good cause, in writing, why she cannot. Failure to comply may
6 result in dismissal of this action.

7 **B. Address Changes**

8 Plaintiff must file and serve a notice of a change of address in accordance with Rule
9 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
10 relief with a notice of change of address. Failure to comply may result in dismissal of this
11 action.

12 **C. Copies**

13 Plaintiff must submit an additional copy of every filing for use by the Court. See
14 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
15 to Plaintiff.

16 **D. Possible “Strike”**

17 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails
18 to file an amended complaint correcting the deficiencies identified in this Order, the
19 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
20 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
21 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior
22 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
23 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
24 or fails to state a claim upon which relief may be granted, unless the prisoner is under
25 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

26 **E. Possible Dismissal**

27 If Plaintiff fails to timely comply with every provision of this Order, including these
28 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at

1 1260-61 (a district court may dismiss an action for failure to comply with any order of the
2 Court).

3 **IT IS ORDERED:**

4 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 3) is **granted**.


5 (2) As required by the accompanying Order to the appropriate government agency,
6 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$10.93.

7 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has
8 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
9 this Order.

10 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
11 Court must, without further notice, enter a judgment of dismissal of this action with prejudice
12 that states that the dismissal may count as a "strike" under 28 U.S.C. § 1915(g).

13 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil
14 rights complaint by a prisoner.

15 DATED this 19th day of January, 2011.

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19 Robert C. Broomfield
20 Senior United States District Judge
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